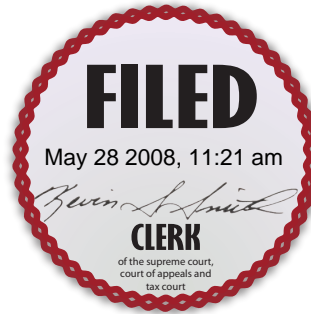


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JAMIE ELAINE DUNNIVAN,

Appellant-Plaintiff,

vs.

ETS, INC., and JAYNE HANSON,

Appellees-Defendants.

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No. 49A04-0710-CV-592

APPEAL FROM THE MARION CIRCUIT COURT
The Honorable Theodore M. Sosin, Judge
Cause No. 49C01-0406-CT-2052

May 28, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Jamie Elaine Dunnivan appeals the trial court's order granting summary judgment in favor of ETS, Inc. and Jayne Hanson on Dunnivan's complaint alleging false imprisonment, false arrest, and malicious prosecution. Dunnivan presents three issues for review. But we address a single dispositive issue, namely, whether Dunnivan has presented a cogent argument on appeal.

We affirm.

FACTS AND PROCEDURAL HISTORY

On or about May 10, 2002, Jon and Susan Joffray's Visa credit card account was charged for a purchase from Papa John's Pizza in Indianapolis. The Joffrays had not authorized the use of the card for that purchase. In June 2002, the Joffrays notified ETS, from which they had purchased tanning equipment and other supplies, of the unauthorized use of their credit card. At the time, Dunnivan was an ETS customer service representative, and she took ninety percent of the Joffrays' orders from ETS.

Hanson, the Director of Customer Relations at ETS, investigated the unauthorized use of the Joffrays' credit card and turned the results over to the Marion County Sheriff's Department. On or about July 24, 2002, Judge Hawkins of the Marion Superior Court found probable cause existed to show that Dunnivan had committed a crime. On March 27, 2003, the State charged Dunnivan with forgery and theft based on the unauthorized use of the Joffrays' credit card. On March 31 and April 1, 2003, a trial on the charges against Dunnivan resulted in a hung jury. The State refiled the charges but later dismissed them.

On June 11, 2004, Dunnivan filed the underlying complaint against ETS and Hanson, alleging false imprisonment, false arrest, and malicious prosecution. In 2004, ETS and Hanson answered and served discovery requests on Dunnivan, to which Dunnivan replied in 2005. On January 4, 2007, the trial court set the case on the call of the docket. In response, on February 1, 2007, Dunnivan filed a praecipe for trial. The court set a trial date of June 27, 2007.

On February 9, 2007, ETS and Hanson filed their motion for summary judgment, designation of evidence, and supporting brief. The court set the matter for hearing on April 25, 2007, and vacated the trial setting. Dunnivan obtained an enlargement of time to respond and, on May 9, 2007, filed a designation of facts and brief, designation to the record, and objection to the summary judgment motion. On May 16, 2007, the trial court set July 18, 2007, as the hearing date for the summary judgment motion; vacated the trial date; ordered the parties to submit a joint case management order; and ordered the parties to mediation. On June 5, 2007, the parties submitted a joint case management order.

Pursuant to an agreed settlement in disciplinary proceedings based on an unrelated case, Dunnivan's counsel was suspended from the practice of law from June 18 through July 17, 2007, with automatic reinstatement. On June 18, counsel for Dunnivan did not appear for the summary judgment hearing. Over objection, the trial court reset the summary judgment hearing for August 1, 2007. Dunnivan's counsel filed a motion to continue the hearing because the date conflicted with his plans to attend the National Bar Association annual convention in Georgia. The trial court denied the motion, but

Dunnivan's counsel did not appear on August 1. After hearing argument from counsel for ETS and Hanson, the trial court took the matter under advisement.

On August 7, 2007, ETS and Hanson filed a verified motion to dismiss pursuant to Trial Rule 41(E) and a supporting brief. On August 20, 2007, the trial court sent "free-form text notice" notifying both parties of its order granting ETS and Hanson's summary judgment motion. Appellant's App. at 13. In particular, the court found that probable cause existed at the time of Dunnivan's arrest based on the testimony of the pizza delivery person and asked counsel for ETS and Hanson to prepare a written order. On August 21, Dunnivan filed her response, objection, and responsive pleadings to the motion to dismiss. And on August 27, 2007, the court approved the written order granting summary judgment. On September 19, Dunnivan filed a motion to correct error. The trial court denied that motion, and Dunnivan now appeals.

DISCUSSION AND DECISION

Dunnivan appeals from an order granting summary judgment in favor of ETS and Hanson on Dunnivan's complaint alleging false arrest, false imprisonment, and malicious prosecution. Dunnivan's arguments on appeal are very difficult to decipher. She appears to argue that the trial court erred in granting summary judgment in favor of ETS and Hanson, that the trial court violated Trial Rule 6 when it ruled on a motion to dismiss, and that the trial court commissioner violated the Code of Judicial Conduct. We conclude that Dunnivan has not supported any of those purported arguments with citations to the record, citations to relevant authority, or cogent reasoning.

Dunnivan first appears to argue that the trial court erred when it granted summary judgment in favor of ETS and Hanson. After quoting Trial Rule 56, Dunnivan states:

Because probable cause and communications to the police investigators made by Jayne Hanson were within the privilege that attaches to reports to law enforcement is a genuine issue of material fact. [sic] The Defendants [ETS and Hanson] did not negate this element of the Plaintiffs' [sic] claim showing there was no genuine issue of material fact as "required by Trial Rule 56". The Motion for Summary Judgment should be denied.

Appellant's Brief at 9 (emphases original). In that single paragraph of argument, Dunnivan alludes to a privilege that attaches to reports to law enforcement and to the burden of ETS and Hanson to "negate this element of Plaintiffs' [sic] claim[.]" Id. But Dunnivan does not explain the privilege alluded to or the burden of ETS and Hanson on summary judgment. Dunnivan also provides no citation to relevant case law, no citation to relevant portions of the record on appeal, and no analysis. Thus, to the extent we understand Dunnivan's argument, she has waived it. See Ind. Appellate Rule 46(A)(8)(a) ("argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . .").

Dunnivan next appears to mix two arguments, first, that the trial court ruled prematurely on a motion and, second, that the court violated the Code of Judicial Conduct by holding an ex parte hearing. That argument, in total, reads:

Court [sic] ruled on the TR 12 and TR41E [sic] motions within less than twenty (20) days, and ruled on the TR 56 motion at an ex parte hearing without notice and opportunity to contest by the Plaintiff. The Plaintiff responded to the TR41E [sic] motion on the 20th day which was August the 21st, 2007.

The trial judge received and considered evidence outside the presence of counsel for the Plaintiff, and as a result, motion for summary judgment should be vacated. In Matter of Guardianship of Garrard (1993), Ind. App., 624 N.E.2d 68.

Because the Court failed to notice the Plaintiff of the hearing, the ruling was at the instance and for the benefit of the Defendant [sic] without notice or contestation by the Plaintiff, the rulings should be vacated. [sic] Because counsel for Plaintiff filed the proper motion under the circumstances, left the state of Indiana prior to the denial of the motion, the Court had knowledge that counsel would be attending the National Bar Association Convention from July 28, 2007 until August 4, 2007.

Appellant's Brief at 9-10 (emphasis original).

Again, Dunnivan's arguments are nearly unintelligible. We are first confused by Dunnivan's complaint about a ruling on the "TR12 and TR41E motions" ETS and Hanson did not file any motion under Trial Rule 12, and the trial court neither held a hearing nor ruled on the motion to dismiss pursuant to Trial Rule 41(E). Thus, Dunnivan's complaint about a non-existent ruling is completely baseless. Dunnivan also contends there was an ex parte hearing, and she appears to argue that summary judgment was improper because her attorney was out of state when the trial court denied her motion to continue the summary judgment hearing. But, again, she has not provided relevant citations to the record or cogent analysis.¹ Thus, that argument is waived. See App. R. 46(A)(8)(a).

Affirmed.

DARDEN, J., and BROWN, J., concur.

¹ On the issue of evidence received outside the presence of counsel, Dunnivan cites to In re Guardianship of Garrard, 625 N.E.2d 68 (Ind. Ct. App. 1993). That case involves a trial judge who telephoned a witness without notice to counsel. Here, Dunnivan's counsel failed to attend the summary judgment hearing. The record shows that Dunnivan's counsel had notice of the hearing, and the trial court had denied his motion to continue. Thus, In re Garrard is inapposite.